

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY POWER COMPANY

ALLEGED VIOLATIONS OF KRS 278.160
AND COMMISSION REGULATION 807 KAR
5:041

)
)
) CASE NO.
) 93-380
)
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O R D E R

On October 18, 1993, Kentucky Power Company ("Kentucky Power") was directed to appear before the Commission and show cause why it should not be penalized pursuant to KRS 278.990 for its alleged failure to comply with KRS 278.160 and Commission Regulation 807 KAR 5:041, Section 3.

Following the commencement of this proceeding, Kentucky Power and Commission Staff entered into negotiations to resolve all disputed issues. On March 17, 1994, they executed a Settlement Agreement, which is appended hereto, and subsequently submitted it for Commission approval. None of the intervening parties to this proceeding have objected to the Settlement Agreement's provisions.

In reviewing this Settlement Agreement, the Commission has considered, inter alia, the seriousness of the violations and Kentucky Power's willingness to correct the noted deficiencies.

After reviewing the Settlement Agreement and being otherwise sufficiently advised, the Commission finds that the Settlement Agreement is in accordance with the law, does not violate any

regulatory principle, results in a reasonable resolution of this case, and is in the public interest.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement, appended hereto, is incorporated into this Order as if fully set forth herein.


2. The terms and conditions set forth in the Settlement Agreement are adopted and approved.


3. Kentucky Power is assessed a penalty of Thirty Five Hundred (\$3,500) Dollars.

4. Kentucky Power shall pay the assessed penalty within 10 days of the date of this Order by certified check or money order made payable to Treasurer, Commonwealth of Kentucky. Said check or money order shall be mailed or delivered to the Office of General Counsel, Public Service Commission of Kentucky, 730 Schenkel Lane, P. O. Box 615, Frankfort, Kentucky.

Done at Frankfort, Kentucky, this 22nd day of April, 1994.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman

ATTEST:


Executive Director


Commissioner

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAR 21 1994

PUBLIC SERVICE
COMMISSION

In the Matter of:

KENTUCKY POWER COMPANY

CASE NO. 93-380

ALLEGED VIOLATIONS OF KRS 278.160
AND COMMISSION REGULATION 807 KAR
5:041

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered this 17th day of ~~February~~ ^{March}, 1994, by and between the STAFF OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ("Commission Staff") and KENTUCKY POWER COMPANY ("Kentucky Power").

W I T N E S S E T H :

THAT, WHEREAS, the Commission Staff issued an Electrical Utility Complaint Inspection Report dated October 11, 1993 ("Inspection Report") describing a complaint involving the facilities of Kentucky Power; and

WHEREAS, Commission Staff in its Inspection Report alleged that certain Kentucky Power facilities and their attachments fail to comply with the standards of the National Electrical Safety Code (1990 Edition) ("NESC"); and

WHEREAS, on October 18, 1993, the Public Service Commission ordered Kentucky Power to show cause why it should not be subject to the penalties of KRS 278.990 for its alleged violations of KRS 278.160 and Commission Regulation 807 KAR 5:041; and

WHEREAS, Kentucky Power and Commission Staff have agreed to the following matters:

1. Kentucky Power is a Kentucky corporation which engages in the distribution of electricity to the public for compensation for light, heat, power, and other uses.
2. Kentucky Power is a utility subject to Public Service Commission jurisdiction.
3. KRS 278.160 requires a utility to enforce the rules and regulations set forth in its filed tariffs.
4. Commission Regulation 807 KAR 5:041, Section 3, requires electrical utilities to maintain their plant and facilities in accordance with NESC standards.
5. Kentucky Power's Tariff CATV, which is on file with the Public Service Commission, requires cable television ("CATV") system operators who attach CATV facilities to Kentucky Power utility poles to install and maintain such attachments in compliance with NESC standards. A copy of Tariff CATV is attached as Exhibit 1.
6. Kentucky Power's certified retail service territory includes Pike County, Kentucky.
7. Kenneth and Lou Compton ("the Comptons") own a tract of land in Pike County, Kentucky ("the tract").
8. On October 18, 1945 Fred Akers and Zetta Akers conveyed an easement and right-of-way to Kentucky and West Virginia Power Company, Kentucky Power's predecessor, authorizing the construction, erection, operation and maintenance of electrical transmission lines over the tract. The Right-of-Way Easement evidencing this conveyance was recorded in Deed Book 268, Page 522 of the Pike County Court Clerk's Office. A copy of that easement is attached as Exhibit 2.
9. Pursuant to the right-of-way easement described in Paragraph 8, Kentucky Power constructed and has for many years operated and maintained electrical conductor and neutral conductors which traverse the tract in a Northwest/Southwest direction and which run parallel to the road fronting the tract, namely Island Creek Road. No Kentucky Power utility poles are located on the tract. The electrical and neutral conductors are supported by poles No. 89 and 92 which sit on adjacent tracts of land. Prior to December 2, 1993, the span supported by Poles No. 89 and 92 was 491 feet in length. Poles No. 89

and 92 are 45 feet in height. A map of the area is attached as Exhibit 3.

10. Prior to 1992 and pursuant to Kentucky Power Tariff CATV, Tel-Com, Inc. ("Tel-Com") attached a CATV conductor to Kentucky Power Poles No. 89 and 92.
11. In late 1992 the Comptons began filling, grading and leveling the tract. This activity reduced the ground clearance of the conductors attached to Kentucky Power Poles No. 89 and 92.
12. In early June 1993, Kenneth Compton notified Commission Staff of the low clearance conditions involving the conductors attached to Kentucky Power poles. Commission Staff referred the matter to Kentucky Power officials. On June 22, 1993, after Kentucky Power had failed to response to its inquiries, Commission Staff submitted a written request for information to Kentucky Power. A copy of this request is attached as Exhibit 4.
13. By letter dated June 29, 1993, a copy of which is attached as Exhibit 5, Kentucky Power responded to Commission Staff's request and advised that the Kentucky Power neutral conductor and the Tel-Com CATV conductor which overhung the tract failed to meet NESC standards. Kentucky Power further advised that Tel-Com had been requested to take corrective action and that Kentucky Power expected to correct its neutral conductor no later than July 2, 1993.
14. On September 21, 1993, Kenneth Compton notified Commission Staff that neither Kentucky Power nor Tel-Com had taken any corrective action.
15. On September 22, 1993, Commission Staff inspected the tract with Kentucky Power officials and found that neither the Kentucky Power neutral conductor nor the Tel-Com CATV conductor complied with NESC ground clearance standards. At the lowest point of the span, the neutral conductor had a ground clearance of 14 feet, 6 inches, and the Tel-Com CATV conductor had a ground clearance of 10 feet, 3.5 inches.
16. On October 18, 1993, the Public Service Commission initiated this proceeding and ordered Kentucky Power to bring all deficient facilities into compliance with NESC standards.
17. On November 23, 1993, an informal conference was held between Commission Staff, Kentucky Power, and

Lou Compton. Kentucky Power and Mrs. Compton agreed on the placement of a new 50 foot utility pole on the tract.

18. On November 30, 1993, Kentucky Power filed suit against Kenneth and Lou Compton in Pike Circuit Court. Kentucky Power requested an injunction requiring the Comptons to allow Kentucky Power access to the tract to set a new utility pole.
19. On December 2, 1993, Pike Circuit Court issued an injunction, a copy of which is attached as Exhibit 6, directing the Comptons to permit Kentucky Power onto the tract.
20. If called to testify, Kentucky Power officials would testify:
 - a. Prior to the filing and leveling of the tract by the Comptons, the conductors attached to Kentucky Power Poles No. 89 and 92 complied with NESC clearance standards.
 - b. As a result of the filling, grading, and leveling of the tract in 1992, the Kentucky Power neutral conductor and the Tel-Com CATV conductor attached to Kentucky Power Poles No. 89 and 92 failed to comply with NESC clearance standards.
 - c. In October 1992, the Comptons requested relocation of the conductors attached to Kentucky Power Poles No. 89 and 92 to permit the construction of a heavy equipment garage on the tract.
 - d. Kentucky first learned of the Compton's leveling activity in October 1992.
 - e. In response to the Comptons' request, Kentucky Power proposed to raise the conductors in question by replacing the existing poles with taller poles. Kenneth Compton objected to the proposal and insisted on relocating the conductors.
 - f. On January 12, 1993, Kentucky Power employees surveyed the tract for a possible line relocation.
 - g. On January 28, 1993, Kentucky Power Marketing Representative J. Smith advised

Kenneth Compton that Kentucky Power could raise the conductors at no cost by either replacing Poles No. 89 and 92 or placing a new 50 foot pole within the existing span. He also informed Mr. Compton that the estimated cost of relocating the conductors was \$18,835 and that any relocation would be at the Compton's expense.

- h. On March 23, 1993, Lou Compton and Kentucky Power employee Terry Hall discussed Kentucky Power's proposals and possible relocation of the CATV conductor.
- i. On October 19, 1993, Kentucky Power employees Bill Johnson and Perry Farmer visited the tract and determined the site of the new pole which would be placed within the existing line's span.
- j. On October 20, 1993, Kentucky Power employees Johnson and Farmer again visited the tract and staked a location for the new utility pole.
- k. In a telephone conversation with Perry Farmer on October 20, 1993, Kenneth Compton agreed to setting of new utility pole on tract. A copy of a letter confirming this conversation is attached as Exhibit 7.
- l. On October 21, 1993, Kentucky Power's independent line crew travelled to the tract to install a new utility pole. Kenneth Compton refused access to the tract to set the pole. The invoiced cost for the line crew was \$1,285.
- m. On November 24, 1993, Kentucky Power employees visited the tract to install a new 50 foot utility pole. Expressing concern that the equipment used to dig the hole for the pole may damage the drainage field for the tract's septic tank, Kenneth Compton refused to permit Kentucky Power to set the utility pole in the manner previously agreed. Kentucky Power agreed to return on November 29, 1993 to set the utility pole manually.

- n. On November 29, 1993, an independent line crew returned to the tract to set the utility pole manually. Kenneth Compton refused access to the tract. Total cost for this visit was \$838.
 - o. On November 29, 1993, Mr. Compton advised Kentucky Power by letter, a copy of which is attached as Exhibit 8, of his refusal to permit access to the tract.
 - p. On December 2, 1993, Kentucky Power employees set a 50 foot utility pole at tract. Total cost to set this utility pole was \$1,464.
 - q. Upon the setting of the new utility pole, Kentucky Power's neutral conductor and Tel-Com's CATV conductor had a ground clearance of 24.8 feet and 19.5 feet respectively. These clearances meet NESC standards.
21. Kentucky Power violated Commission Regulation 807 KAR 5:041, Section 3, by failing to maintain its neutral conductor which traversed the tract in accordance with NESC standards.

WHEREAS, Kentucky Power and Commission Staff disagree on whether Kentucky Power's actions in regard to the Tel-Com CATV conductor violated any provision of KRS Chapter 278 or any Commission regulation; and

WHEREAS, Kentucky Power and Commission Staff desire to settle the issues raised by this proceeding.

NOW, THEREFORE, Kentucky Power and Commission Staff agree as follows:

1. Kentucky Power shall, within ten (10) days of entry of an Order approving this Settlement Agreement, pay to the Kentucky State Treasurer the sum of Three Thousand Five Hundred Dollars (\$3,500).

2. This Settlement Agreement constitutes full satisfaction of any penalties against Kentucky Power arising out of its operation of its facilities which traverse the Comptons' property. Commission Staff shall recommend to the Commission that this Settlement Agreement be approved and that this proceeding be closed and removed from the Commission's docket.


3. This Agreement is subject to the acceptance of and approval by the Public Service Commission.

4. If the Public Service Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward and neither the terms of this Settlement Agreement nor any matters raised during settlement negotiations shall be binding on either signatory.

5. If the Public Service Commission accepts and adopts this Settlement Agreement in its entirety and enters an order in this proceeding to that effect, Kentucky Power shall not apply for rehearing in this proceeding nor bring an action for review of that order.

6. Nothing contained herein shall be considered as an admission by Kentucky Power that its actions in regard to the Tel-Com CATV conductor violated any provision of KRS Chapter 278 or any Commission regulation.

IN WITNESS WHEREOF, Kentucky Power and Commission Staff have executed this Settlement Agreement through their duly authorized attorneys.



Bruce F. Clark
STITES & HARBISON
421 West Main Street
Frankfort, Kentucky 40601
Telephone: (502) 223-3477
COUNSEL FOR KENTUCKY POWER COMPANY



Gerald E. Wuetcher
Post Office Box 615
Frankfort, Kentucky 40602
Telephone: (502) 564-3940
COUNSEL FOR STAFF OF PUBLIC SERVICE
COMMISSION OF KENTUCKY

TARIFF C.A.T.V.
(Cable Television Pole Attachment)AVAILABILITY OF SERVICE.

Available to operators of cable television systems (Operators) furnishing cable television service in the operating area of Kentucky Power Company (Company) for attachments of aerial cables, wires and associated appliances (attachments) to certain distribution poles of Kentucky Power Company.

RATES.

Charge for attachments on a two-user pole \$ 4.97 per pole/year
Charge for attachments on a three-user pole \$ 5.53 per pole/year

The above rate was calculated in accordance with the following formula:

Weighted Average X Usage X Carrying = Rate Per Pole
Base Pole Cost Factor Charge

DELAYED PAYMENT CHARGE.

This Tariff is net if account is paid in full within 15 days of date of bill. On all accounts not so paid an additional charge of 5% of the unpaid balance will be made.

POLE SUBJECT TO ATTACHMENT.

When an Operator proposes to furnish cable television service within the Company's operating area and desires to make attachments on certain distribution poles of Company, Operator shall make written application, on a form furnished by Company, to install attachments specifying the location of each pole in question, the character of its proposed attachments and the amount and location of space desired. Within twenty-one (21) days after receipt of the application, Company shall notify Operator in writing whether and to what extent any special conditions will be required to permit the use by Operator of each such pole. Operator shall have a non-exclusive right to use such poles of Company as may be used or reserved for use by Operator and any other poles of Company when brought hereunder in accordance with the procedure hereinafter provided. Company shall have the right to grant, by contract or otherwise to others rights or privileges to use any poles of the Company and Company shall have the right to continue and extend any such rights or privileges heretofore granted. All poles shall be and remain the property of Company regardless of any payment by Operator toward their cost and Operator shall, except for the rights provided hereunder, acquire no right, title or interest in or to any such pole.

STANDARDS FOR INSTALLATION.

All attachments and associated equipment of Operator (including without limitation, power supplies) shall be installed in a manner satisfactory to Company and so as not to interfere with the present or any future use which Company may desire to make of the poles covered by this Tariff. All such attachments and equipment shall be installed and at all times maintained by Operator so as to comply at least with the minimum requirements of the National Electrical Safety Code and any other applicable regulations or codes promulgated by state, local or other governmental authority having jurisdiction thereover. Power supply apparatus having as its largest dimension more than sixteen inches must be placed on a separate pole to be installed by Operator. Operator shall take necessary precautions by the installation of protective equipment or other means, to protect all persons and property of all kinds against injury or damage occurring by reason of Operator's attachments.

POLE INSTALLATION OR REPLACEMENT; REARRANGEMENTS; GUYING.

In any case Operator proposes to install attachments on a pole to be erected by Company in a new location, and to provide adequate space or strength to accommodate such attachments (either at the request of Operator to comply with the aforesaid codes and regulations) such pole must, in Company's judgment, be taller and/or stronger than would be necessary to accommodate the facilities of Company and of other persons who have previously indicated that they desire to make attachments on such pole or with whom Company has an agreement providing for joint or shared ownership of poles, the cost of such extra height shall be the difference between the cost in place of a pole considered by Company to be adequate for the facilities of Company and the current cost in place of a pole considered by Company to be adequate for the facilities of Company and the attachments of such other persons.

(Cont'd on Sheet No. 16-2)

APR 1 1991

DATE OF ISSUE November 11, 1991

DATE EFFECTIVE Service rendered on and after April 1, 1991

ISSUED BY *C. R. Boyle, Jr.*
C. R. BOYLE, JR.

PRESIDENT

PURSUANT TO 607 KAR 5.011.
ASHLAND, KENTUCKY

NAME

TITLE

ADDRESS SEC. 117.011

Issued by authority of an Order of the Public Service Commission in Case No. 91-066 dated October 28, 1991

TARIFF C.A.T.V. (Cont'd)
(Cable Television Pole Attachment)POLE INSTALLATION OR REPLACEMENT; REARRANGEMENTS; GUYING. (Cont'd)

Where in Company's judgment a new pole must be erected to replace an existing pole solely to adequately provide for Operator's proposed attachments, Operator agrees to pay Company for the cost of extra height or strength as provided in the preceding paragraph, and a sum equal to the then value in place of the pole which is replaced, plus the cost of removal of the in-place pole, minus the salvage value, if any, of the removed pole. Operator shall also pay to Company and to any other owner of existing attachments on the pole the cost of removing each of their respective facilities or attachments from the existing pole and reestablishing the same or like facilities or attachments on the newly-installed pole.

If Operator's desired attachments can be accommodated on existing poles of Company by rearranging facilities of Company or existing attachments thereon of any other person, or if because of Operator's proposed attachments it is necessary for Company to rearrange its facilities on any pole not owned by it, then in any such case, Operator shall reimburse Company and any such other person for the respective expense incurred in making such rearrangement.

If because of the requirements of its business, Company proposed to replace an existing pole on which Operator has any attachment, or Company proposed to change the arrangement of its facilities on any such pole in such manner as to necessitate a rearrangement of Operator's attachment, or if as a result of any inspection of Operator's attachments Company determines that any such attachments are not in accordance with applicable codes or the provisions of this Tariff or are otherwise hazards Company shall give Operator not less than 48 hours notice of such proposed replacement or change, or any such violation or hazard, unless an emergency requires a shorter period. In such event, Operator shall at its expense relocate, rearrange or modify its attachments at the time specified by Company. If Operator fails to do so, or if any such emergency makes notice impractical, Company shall perform such relocation or rearrangement and Operator shall reimburse Company for the reasonable cost thereof.

Any additional guying or anchors required by reason of the attachments of Operator shall be provided at the expense of Operator and shall meet the requirements of all applicable codes or regulations and Company's generally applicable guying standards.

POLE INSPECTION.

Company reserves the right to inspect each new or proposed installation of Operator on Company's poles. In addition, Company may make periodic inspections, as conditions may warrant, for the purpose of determining compliance with the provisions of this Tariff. Company's right to make any inspections and any inspection made pursuant to such right shall not relieve Operator of any responsibility, obligation or liability assumed under this Tariff.

UNAUTHORIZED ATTACHMENTS.

Operator shall make no attachment to or other use of any pole of Company or any facilities of Company thereon, except as authorized. Should such unauthorized attachment or use be made, Operator shall pay to Company on demand two times the charges and fees, including but not limited to, any payable under the heading "POLE INSTALLATION OR REPLACEMENT; REARRANGEMENTS; GUYING" that would have been payable had such attachment been made on the date following the date of the last previous inspection required to be made by Company under applicable regulations of the Kentucky Public Service Commission.

ABANDONMENT BY OPERATOR.

Operator may at any time abandon the use of a pole hereunder by removing therefrom all of its attachments and by giving written notice thereof on a form provided by the Company, and no pole shall be considered abandoned until such notice is received.

INDEMNITY.

Operator hereby agrees to indemnify, hold harmless, and defend Company from and against any and all loss, damage, cost or expense which Company may suffer or for which Company may be held liable by reason of the installation of Operator's service to its subscribers or because of interference with telecommunication of said subscribers or others, or by reason of bodily injury, including death, to any person, or damage to or

(Cont'd on Sheet No. 16-3)

DATE OF ISSUE November 11, 1991 DATE EFFECTIVE Service rendered on and after April 1, 1991
ISSUED BY C. R. BOYLE III PRESIDENT ATKINS, KENTUCKY
NAME TITLE ADDRESS
Issued by authority of an Order of the Public Service Commission in Case No. 91-066 Section 10.118, 1991

BY: [Signature]
P.S.C. ELECTRIC NO. 6

TARIFF C.A.T.V. (Cont'd)
(Cable Television Pole Attachment)INDEMNITY. (Cont'd)

destruction of any property, including loss of use thereof, arising out of or in any manner connected with the attachment, operation, and maintenance of the facilities of Operator on the poles of Company under this Tariff, when due to any act, omission or negligence of Operator, or to any such act, omission or negligence of Operator's respective representatives, employees, agents or contractors.

INSURANCE

Operator agrees to obtain and maintain at all times policies of insurance as follows:

- (a) Comprehensive bodily injury liability insurance in an amount not less than \$1,000,000 for any one occurrence.
- (b) Comprehensive property damage liability insurance in an amount not less than \$500,000 for any one occurrence.
- (c) Contractual liability insurance in an amount not less than the foregoing minimums to cover the liability assumed by the Operator under the agreement or indemnity set forth above.

Prior to making attachments at Company's poles, Operator shall furnish to Company two copies of a certificate, from an insurance carrier licensed to do business in Kentucky, stating that policies of insurance have been issued by it to Operator providing for the insurance listed above and that such policies are in force. Such certificate shall state that the insurance carrier will give Company fifteen (15) days' prior written notice of any cancellation of or material change in such policies.

EASEMENTS.

Operator shall secure any right, license or permit from any governmental body, authority or other person or persons which may be required for the construction or maintenance of attachments of Operator. Company does not convey nor guarantee any easements, rights-of-way or franchises for the construction and maintenance of said attachments. Operator hereby agrees to indemnify and save harmless Company from any and all claims, including the expenses incurred by Company to defend itself against such claims, resulting from or arising out of the failure of Operator to secure such right, license, permit or easement for the construction or maintenance of said attachments on Company's poles.

CHARGES AND FEES.

Operator agrees to pay Company in advance, semi-annually, charges to be computed as set forth in Tariff, and such other charges as may be provided for herein, for the use of each of Company's poles, any portion of which is occupied by, or reserved at Operator's request for the attachments of Operator.

Operator agrees to reimburse Company for all reasonable non-recurring expenses caused by or attributable to Operator's initial attachments including without limitation the amounts set forth herein before and the expenses of Company in examining poles used but not owned by Company to which Operator proposes to make attachments.

FEES FOR ADDITIONAL ATTACHMENTS OR REMOVALS.

For attachments made or removed which are reported to the Company between billing dates, Operator shall be billed or credited a prorated amount of the annual charge effective with the date of attachment or removal on the Operator's next bill.

ADVANCE BILLING.

Payments of amounts due hereunder are due on the dates or at the times indicated with respect to each such payment. In the event the time for any payment is not specified, such payment shall be due fifteen (15) days from the date of the invoice therefor. On all amounts not so paid an additional charge of five percent (5%) will be assessed. Where the provisions of this Tariff require any payment by Operator to Company other than for attachment charges, Company may, at its option, require that the estimated amount thereof be paid in advance of permission to use any pole or the performance by Company of any work. In such a case, Company shall invoice any deficiency or refund any excess to Operator after the correct amount of such payment has been determined.

(Cont'd on Sheet No. 16-4)

APR 1 1991

DATE OF ISSUE November 11, 1991

DATE EFFECTIVE Service Attachment to 007-KAR 6-01 1991

ISSUED BY C. R. BOYLE III

PRESIDENT

ASHLAND, KENTUCKY

NAME

TITLE

ADDRESS

Issued by authority of an Order of the Public Service Commission in Case No. 91-066, Dated October 28, 1991.

TARIFF C.A.T.V. (Cont'd)
(Cable Television Pole Attachment)DEFAULT OR NON-COMPLIANCE.

If Operator fails to comply with any of the provisions of this Tariff or defaults in the performance of any of its obligations under this Tariff and fails within thirty (30) days, after written notice from Company to correct such default or non-compliance, Company may, at its option forthwith take any one or more of the following actions: terminate the specific permit or permits covering the poles to which such default or non-compliance is applicable; remove, relocate or rearrange attachments of Operator to which such default or non-compliance relates, all at Operator's expense; decline to permit additional attachments hereunder until such default is cured; or in the event of any failure to pay any of the charges, fees or amounts provided in this Tariff or any other substantial default, or of repeated defaults terminate Operator's right of attachment. No liability shall be incurred by Company because of any or all such actions except for negligent destruction by the Company of CATV equipment in any relocation or removal of such equipment. The remedies provided herein are cumulative and in addition to any other remedies available to Company.

PRIOR AGREEMENTS.

This Tariff terminates and supersedes any previous agreement, license or joint use affecting Company's poles and Operator's attachments covered herein.

ASSIGNMENT.

This Tariff shall be binding upon and inure to the benefits of the parties hereto, their respective successors and/or assigns, but Operator shall not assign, transfer or sublet any of the rights hereby granted without the prior written consent of the Company, which shall not be unreasonably withheld, and any such purported assignment, transfer or subletting without such consent shall be void.

PERFORMANCE WAIVER.

Neither party shall be considered in default in the performance of its obligations herein, or any of them, to the extent that performance is delayed or prevented due to causes beyond the control of said party, including but not limited to, Acts of God or the public enemy, war, revolution, civil commotion, blockade or embargo, acts of government, any law, order, proclamation, regulation, ordinance, demand, or requirement of any government, fires, explosions, cyclones, floods, unavoidable casualties, quarantine, restrictions, strikes, labor disputes, lock-outs, and other causes beyond the reasonable control of either of the parties.

PRESERVATION OF REMEDIES.

No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Company shall impair or affect its right thereafter to exercise the same.

HEADINGS.

Headings used in this Tariff are inserted only for the convenience of the parties and shall not affect its interpretation or construction of this Tariff.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

APR 1 1991

PURSUANT TO 607 KAR 6:011.
SECTION 3 (1)

BY: [Signature]
PUBLIC SERVICE COMMISSION SECRETARY

DATE OF ISSUE November 11, 1991

DATE EFFECTIVE Service rendered on and after April 1, 1991

ISSUED BY C. R. BOYLE III
NAME

PRESIDENT
TITLE

ASHLAND, KENTUCKY
ADDRESS

Issued by authority of an Order of the Public Service Commission in Case No. 91-066 dated October 28, 1991

AMERICAN CO. 1945 20
RIGHT OF WAY EASEMENT
Form No. 103-R/E

MA 3783.95
NO. 51

RECEIVED OF KENTUCKY AND WEST VIRGINIA POWER COMPANY, INCORPORATED, a

Kentucky corporation, the sum of One Dollar (\$1.00)

, in consideration of which Fred Akers

and Zetta Akers, his wife

hereby grant and convey unto said Kentucky and West Virginia Power Company, Incorporated, its successors and assigns, the right and easement to construct, operate and maintain or remove an electric power line, with all necessary poles, anchors, wires and fixtures and the right to permit attachments of others to said poles on and over our lands, with services and extensions therefrom, situate in the District of Island Creek, County of Fulton, and State of Kentucky, and bounded:

On the North by the lands of Richard H. Compton

On the East by the lands of Lucy H. Compton

On the South by the lands of W. L. H. Compton

On the West by the lands of W. L. H. Compton

with the right of ingress and egress to and from and over said premises.

Being an easement over the same property conveyed to grantor herein by Elizabeth Phillips, by deed dated 2-22-1941, and recorded in Page 229, County, Deed Book 235, date 2-28-1941.

Together with the right to cut or trim any trees which may endanger the safety or interfere with the construction and use of said electric power line.

TO HAVE AND TO HOLD the same unto said Kentucky and West Virginia Power Company, Incorporated, its successors and assigns.

It is agreed that the foregoing is the entire contract between the parties hereto, and that this written agreement is complete in all its terms and provisions.

This agreement is dated the 1st day of October, 1945.

WITNESS the following signatures and names:

WITNESS:

Robert Leon Hoffman, President

Fred Akers (SEAL)
Zetta Akers (SEAL)
____ (SEAL)
____ (SEAL)

EXHIBIT 3

(FILED WITH ORIGINAL BUT NOT REPRODUCED HEREIN)



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
710 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY 40602
(502) 364-3940

June 22, 1993

Mr. Coulter R. Boyle
President
Kentucky Power Company
1701 Central Avenue
P.O. Box 1428
Ashland, KY 41101

Dear Mr. Boyle:

Mr. Kenneth Compton called our office regarding low clearance of the electric and cable TV lines that cross his property on Route 5 Box 301 Pikeville, Kentucky.

Mr. Fred Long of Kentucky Power Company ("Kentucky Power") was contacted regarding this complaint. He referred this matter to Mr. Perry Farmer of Kentucky Power who contacted Mr. Elie El-Rouaiheb of the Commission's staff. Mr. Farmer indicated that the electric lines' clearances meet the NESC, but the cable TV line which is attached to Kentucky Power's poles may not. A request was made to Mr. Farmer to have the line clearances checked on Mr. Compton's property and to report back to us concerning whether the lines meet the clearances required by the NESC. This conversation took place on June 10, 1993. As of the date of this letter, we have not heard from Mr. Farmer regarding the line clearances even though he was contacted twice by Mr. El-Rouaiheb and a message was left asking him to return the calls.

Within 7 days from the date of this letter provide the following information:

1. Do the electric lines and cable TV lines meet the clearances required by 1990 NESC?

2. If the response to question 1 is no, indicate the steps taken by Kentucky Power to insure that the line clearances will meet the 1990 NESC and indicate the completion date.

If you have any questions, please contact Mr. Elie El-Rouaiheb
at (502) 564-3940.

Sincerely,

A handwritten signature in dark ink, appearing to read "Claude G. Rhorer, Jr.", written in a cursive style.

Claude G. Rhorer, Jr., Director
Division of Utility Engineering
and Services

CGR:tgp

Kentucky Power Company
108 Main Street
P. O. Box 615
Frankfort, KY 40602
505-437-0077



Mr. Elie El-Rouaiheb
Division of Utility Engineering and Services
Commonwealth of Kentucky
Public Service Commission
730 Schenkel Lane
P. O. Box 615
Frankfort, KY 40602

RECEIVED

JUL 2 1993

DIVISION OF UTILITY
ENGINEERING & SERVICE

June 29, 1993

Dear Elie,

This letter is in confirmation of our telephone conversation of June 25, 1993 concerning the line clearance on the Kenneth Compton property on Route 5, Box 301, Pikeville, Kentucky.

We have measured the clearances of both the cable TV company and our own distribution line. The CATV company will have less than eight (8) feet of clearance over the area in question. Our lowest conductor is the neutral on our three phase line and it is at fourteen (14) feet. Correction is needed in both instances.

A letter has been mailed to the CATV company requesting that clearance be corrected as soon as possible or relocate from our poles. Our tariff with them allows a maximum of thirty (30) days to correct such a deficiency.

Kentucky Power will work to raise the neutral in this location to fifteen and one half feet (15.5) in order to meet code requirements. I expect this to be completed by Friday, July 2, 1993.

Sincerely,

A handwritten signature in cursive script, appearing to read "Perry Farmer".

Perry Farmer
Engineering Manager

PF:mr

PIKE CIRCUIT COURT
DIVISION NO. II

Civil Action No. 93-CI-1559

KENTUCKY POWER COMPANY

Plaintiff

v.

KENNETH COMPTON

Defendant

ENTERED
DEC 2 DAY OF Dec, 19 93
P.C.
CLERK OR DEPUTY, PIKE COUNTY, KY.

RESTRAINING ORDER

/ / / / / / / /

Upon Motion of the Plaintiff, Kentucky Power Company, for a Restraining Order, and the Court having considered the verified Complaint along with the Affidavit of John Vance, Right-of-Way Agent for Kentucky Power Company, and being otherwise sufficiently advised, it is

ORDERED AND ADJUDGED that a Restraining Order be and the same hereby is issued against the defendant, Kenneth Compton, and/or his agents or persons acting in concert with him, enjoining them from interfering with the rights of Kentucky Power Company to enter upon the properties of Kenneth Compton (being those properties acquired by Kenneth Compton from Arthur B. Akers, et ux, of record in Deed Book 658, Page 473), on the Left Fork of Island Creek, Pike County, Kentucky, the subject premises, to erect and maintain electrical transmission lines in, over, across or through the subject premises, which rights were granted to Kentucky Power Company by Right-of-Way Easement

from Fred Akers and Zetta Akers, his wife, dated October 18, 1945, of record in Deed Book 268, Page 522, Pike County Clerk's Office, a copy of which is attached to the Complaint filed in this action.

The Court hereby accepts bond posted by plaintiff in the amount of \$ 25,000⁰⁰, with the Pike Circuit Court Clerk.

This Restraining Order is issued on the 12 day of December, 1993, at the hour of 8:55 o'clock, A.m.


JUDGE, PIKE CIRCUIT COURT

SHERIFF'S RETURN

A true copy of the within Restraining Order was served upon the defendant, Kenneth Compton, Route 3, Box 301, Pikeville, Kentucky 41501, on the _____ day of _____, 1993.

CHARLES "FUZZY" KEESEE, SHERIFF
PIKE COUNTY, KENTUCKY

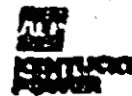
By _____
Deputy Sheriff

OCT 21 '93 15:24 FR PIKEVILLE

OCT 21 '93 5:43

JULIEN J. JONES
P. O. Box 1227
Pikeville, KY 41501-1227
606-437-3777

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OCTOBER 21, 1993

KENNETH COMPTON
RT. 5 BOX 301
PIKEVILLE, KY. 41501

DEAR MR. COMPTON,

THIS LETTER IS TO CONFIRM OUR TELEPHONE CONVERSATION YESTERDAY CONCERNING YOUR PROPERTY LOCATED AT THE MOUTH OF LONG BRANCH OF ISLAND CREEK, PIKEVILLE, KY. KENTUCKY POWER COMPANY HAS A POWER LINE CROSSING YOUR PROPERTY AND THE NEUTRAL TO GROUND CLEARANCE IS LESS THAN THAT REQUIRED BY THE NATIONAL ELECTRIC SAFETY CODE.

IN ORDER TO CORRECT THIS PROBLEM, KENTUCKY POWER COMPANY WILL BE SETTING A POLE WITHIN ITS EASEMENT ON YOUR PROPERTY. THIS POLE WILL BE APPROXIMATELY HALF WAY BETWEEN THE TWO POLES ON EITHER SIDE OF YOUR PROPERTY.

THIS WORK IS BEING DONE TO MEET THE REQUIREMENTS OF A KENTUCKY PUBLIC SERVICE COMMISSION ORDER TO CORRECT THE NEUTRAL TO GROUND CLEARANCE PROBLEM.

KENTUCKY POWER COMPANY WILL STILL CONTINUE TO WORK WITH YOU TO DETERMINE THE NECESSARY WORK TO MAINTAIN CODE CLEARANCES OVER OR AROUND THE BUILDING YOU PROPOSE TO PLACE ON YOUR PROPERTY AT THIS SITE. IT IS MY UNDERSTANDING THAT YOU PLAN TO BEGIN WORK ON THE BUILDING AROUND MARCH OF 1994. WE WOULD LIKE TO OBTAIN EXACT DIMENSIONS ON YOUR BUILDING IN ORDER TO HELP DETERMINE POLE SIZES NECESSARY FOR CLEARANCE OVER IT.

IF THAT INFORMATION IS AVAILABLE WITHIN THE NEXT WEEK WE WILL MEET WITH YOU TO DISCUSS AND AGREE ON THE BEST WAY TO ACCOMPLISH GETTING YOUR BUILDING COMPLETED AND MAINTAINING OUR CODE CLEARANCES. THIS MEETING SHOULD BE COMPLETED WITHIN TWO WEEKS OF TODAY'S DATE.

IF YOU HAVE ANY QUESTIONS OR I MAY BE OF ANY FURTHER HELP, PLEASE FEEL FREE TO CALL ME AT 606-437-3821 OR AT HOME AT 606-754-7820.

SINCERELY,

A handwritten signature in cursive script that reads "Perry Farmer".

PERRY FARMER
ENGINEERING MANAGER

C: FILE